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May 9, 2005

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation in WC Docket No. 04-36

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this letter is to provide notice in the above-captioned docketed proceeding of *ex parte* communications on May 8, 2005, by Jonathan Askin of pulver.com with Dan Gonzalez, Michelle Carey, Pete Belvin, Matt Brill, Jessica Rosenworcel, Scott Bergmann, Tom Navin, Julie Veach and Bob Pepper. Mr. Askin expressed pulver.com's views on the Commission's approach to the E911 issues under consideration in the IP-enabled services. The views expressed are more fully considered in the pulver.com Comments filed on May 28, 2004, in Docket 04-36.

pulver.com urged the Commission to stay the course in allowing the IP-based communications industry to develop and flourish free from traditional telecommunications regulation. pulver.com asked that the Commission not subject IP-based communications to a set of archaic regulations, particularly those related to compulsory E911 obligations for nomadic IP-based communications products and services. pulver.com noted that despite current IP-based provisioning of 911 emergency service, it seemed that the FCC was poised to adopt an Order at its May 19 Open Meeting that could leave VoIP subscribers less safe, by giving providers only 120 days to provide nationwide (perhaps even global depending on wording of the Order) E911 service, *even for nomadic VoIP* services. pulver.com noted that the FCC Order is, no doubt, motivated by the most noble of goals – reliable emergency response systems for all American -- but pulver.com does not believe that the current Order accomplishes the worthy goal and, in the process, could devastate the emerging IP-based communications industry.

It makes no sense to stifle the nomadic capability and essentially turn every IP-based communications service into a fixed line, because the added nomadic capability of an IP-based service does not avail itself of an

immediate, ubiquitous, localized emergency response solution. The industry is working towards next-generation solutions that would allow any device, application, or service, to deliver text, video, or voice to emergency responders anytime and anywhere there is an Internet connection. The industry, however, needs significantly more time than 120 days to establish viable solutions.

There are some obligations with which most in the industry are perfectly capable of complying –- and if VoIP providers had cost-based access to LEC selective routers, VoIP providers could do even more. Some of the obligations that the FCC might impose on VoIP providers, however, are technologically and financially untenable, particularly as they relate to a provider's ability to offer nomadic capabilities on a national or global scale. No VoIP provider can access all the PSAPs necessary to offer a nationwide solution -- especially when PSAPs in 150 counties lack the ability to handle E911. Even cost-based access is untenable for all but the most connected and well-heeled providers. Press reports indicate that Vonage was able to get access to two of the nation's estimated 500 selective routers at a price of $1 million per month plus a one time $10 million fee. Even if the FCC were able to cap that price at $1 million per Bell company and no one time fees, it would still require a VoIP providers with 10,000 customers to increase its bill by $400 per month to update its 911 coverage to E911. VoIP providers, even if they had the time, staff and economic resources to work towards a nationwide solution would be at the mercy of other carriers with whom the VoIP provider would have to partner in order to establish a nationwide E911 service. The bottom line is that a nationwide solution does not exist and will not exist in 120 days. If nomadic VoIP services can operate anywhere there is a broadband connection, it is impossible for a nomadic VoIP service provider to be in compliance with our current understanding of the FCC's likely rule.

VoIP, by its very nature, should empower a user to take her service anywhere without having to check with the VoIP provider to verify that the particular remote location has an arrangement with the VoIP provider. It is one thing to compel a primary fixed-fixed line provider, be it VoIP or traditional telephony, to provide E911 capabilities, but what logic would be served from turning off the nomadic capability of IP technology simply because the user cannot access a local emergency response system when she attaches her computer with a softphone program or other IP phone to a broadband connection at a hotel or other remote location? Isn't it possible that a person at a coffee shop who witnesses an armed robbery and shooting might be able to save a life by being able to either dial the police or dial basic 911 using her nomadic VoIP solution rather than preventing any calls because there isn't an E911 capability?

It's important to put VoIP E911 in context -- 150 US counties still don't have even the most basic 911 for wireline phone service, only about 40% of the nation's PSAPs have E911 for wireless phones, people in multi-tenant buildings still can't be located within the building –- decades after PBX technology has been introduced. In the first years that VoIP has entered the residential market, however, it is already often providing E911 where technologically and operationally possible -- all without any rules or laws and something that took the wireless industry 16 years to do. So, if wireline moved at a snail's pace, wireless at a turtle's pace, the VoIP community has moved at a rabbit's pace because they understand that, even though only 2% of all 911 calls will come from VoIP over the next 3 years, it is an important service that they need in order to compete with traditional phone services. VoIP providers have every incentive to have the most robust 911 solutions technologically possible. But a broad-based mandate could stifle the very important industry efforts and standards already underway to develop not just E911, but a set of breakthrough improvements in our nation's emergency network.

The issue is obviously of more concern to "connected" VoIP services than to peer-to-peer IP-based communications services such as Skype, Free World Dialup, AIM, yahoo or MSN. But the consequences could extend to peer-to-peer services, particularly where the peer-to-peer provider allows for even limited PSTN connectivity. If a VoIP provider is offering outbound service within the US (like this yellow page click-to-call directory on Amazon.com (http://www.estara.com/livedemo/a9/), will Amazon.com have to ensure (at least through its underlying LEC or through a service bureau) that its customers can reach an emergency responder? E911 requires a call-back number but one-way services are only one-way. And what about the future of inbound-only services? There really should not be any expectation that the inbound-only line could make an outbound PSTN call (either to an emergency responder or anyone else).

pulver.com believes that government and the IP-based communications industry need to think creatively about how to protect consumers in a new communications environment. pulver.com and many members of the IP-based communications community are committed to achieving these very same goals through industry-based solutions that do not unnecessarily subject industry to regulatory and other governmental intrusion.

If you have any questions about this matter, please contact me at 631-961-1049.

Respectfully submitted,
/s/
Jonathan Askin

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